

REMARKS

Applicants respectfully submit that the reply filed on January 10, 2003 (hereinafter “prior response”), is fully responsive to the Office communication dated September 20, 2002, paper number 18, as far as such communication from the Office can be understood.

As noted previously, the species in the alleged subgroup “solid support” are not fully identified in the Office Action. The Office Action does not clearly identify the species on which the election is meant to apply. The Office Action lists only three alleged species followed by the term “etc”. No indication of what is meant by “etc” and no information on the criterion used to identify species in this subgroup are provided in the Office Action.

As indicated in the prior response, Applicants have been provided with an incomplete identification of species, with no indication of the criterion used to classify such species, and with three alleged species that are not mutually exclusive. However, these issues have not been addressed in the Office Action. In light of these issues, Applicants may not meaningfully elect a species, and furthermore Applicants may not ascertain whether the restriction and election requirements are consistent with a full consideration of all the pending claims in the examination of the present application. Repeated statements requiring Applicants to elect claims to a single species instead of a generic claim simply prevent the advancement of the present case through examination when it is not clearly indicated in the communications to Applicants what is to be understood as being generic versus specific, and when the alleged species are not clearly identified.

The Office Action states that “Applicant[s] refer[] repeatedly to various sections of Chapter 800 of the MPEP” and further indicates that “this case is filed under 35 U.S.C. [§] 371 and thus is subject to Lack of Unity requirements.” Office Action, p. 4. As the record clearly shows, this is certainly a case filed under 35 U.S.C. § 371, and furthermore the restriction

Serial No. 09/530,907

requirement traversal by Applicants has relied, *inter alia*, on such characteristic of the present application. *See, e.g.*, Response to Restriction/Election Requirement, dated June 13, 2002.

Therefore, the note in the Office Action regarding the nature of the filing of the present case is not understood.

In addition to the reason pointed out above, the note in the Office Action regarding the nature of the filing of the present case is not understood because the initial citations to M.P.E.P. Ch. 800 actually originated in communications from the P.T.O. to Applicants. For example, the Office Action dated April 24, 2002, contains at least the following citations to M.P.E.P. Ch. 800: M.P.E.P. § 809.02(a) (p. 8, ¶ 20); M.P.E.P. § 812.01 (p. 8, ¶ 21); and M.P.E.P. § 809.02(a) (p. 9, ¶ 23).

Applicants point out that the legal and procedural authority cited in the previous office actions to purportedly support species election requirements does not appear to even contemplate requirements for species elections. Such authority refers to unity of invention according to PCT rules and to group restriction requirements, but it does not appear to refer to species elections.

Applicants request that the authority that is relied on in the Office Action to require species elections in the present case be provided. Applicants also request that the authority that is relied on in the Office Action to classify claims as generic or as claims that read on a certain species be provided.

Characterizations in the Office Action of confusing claim identifications by Applicants do not appear to be based on any rationale for species classification. As indicated above, no such rationale and no clear and full identification of the alleged species are provided to Applicants.

Serial No. 09/530,907

To expedite examination, and only for the purpose of providing a fully responsive reply, Applicants elect as species of solid support the alleged species “solid support is film or tape”. Claims reading directly or by incorporation on this alleged species are believed to include claims 12-14. Claim 38 also recites “film or tape”.

Claims that can be considered generic to this alleged species include claims 1-11, 17-19, and 22-36. These claims recite directly or by incorporation the terms “solid support”. The term “detector” is recited in claims 15 and 16, and the Office Action uses this term to identify a second alleged species of solid support. The terms “compact disk” are recited as “compact disc” in claims 20 and 21, and the Office Action uses these terms to identify a third and final alleged species of solid support.

No other alleged species of “solid support” are identified in the Office Action, and no criterion for such species identification is provided in the Office Action. Therefore, this election addresses to the full extent the characterization provided in the Office Action for the alleged subgroup “solid support” in terms of the alleged three species provided therein. This election by applicants, however, is not intended to imply any limitation to the claims as presently drafted. For example, the “solid support” recited in claim 16 can be a “film” and the same claim also recites by incorporation a solid support that is a “detector”, yet the Office Action implies that “detector” and “film” belong to two different species.

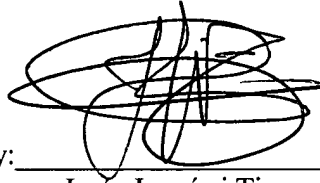
To the extent that mutual exclusivity amongst the three alleged species identified in the Office Action for the alleged subgroup “solid support” is not satisfied, Applicants regard any and all claims that can be included in more than one species as belonging to all such species.

As previously requested, Applicants respectfully request that the restriction requirement and the species election requirement be reconsidered and withdrawn. Applicants reassert herein

Serial No. 09/530,907

the traverse set forth in the prior response, and respectfully request favorable consideration of this Response.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

By: _____

Jesus Juanós i Timoneda, PhD
Reg. No. 43,332

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-1513
Dated: April 9, 2003